

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,456

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare terminating her Essential Person program benefits.

FINDINGS OF FACT

1. The petitioner has an intermittent explosive personality disorder and post traumatic stress syndrome which is in remission. She has been receiving \$285 per month from the Department to pay her spouse to assist her under the Essential Person (EP) program.
2. Pursuant to new regulations which were to be adopted in the EP program on July 1, 1996, the petitioner was required to fill out a self-assessment form and to provide a certification from her doctor as to her condition. The petitioner's husband, who is thirty-years old, filled out that form for her and returned it on May 31, 1996 along with her doctor's certification and a certification regarding his own physical condition.
3. The petitioner's form reported that she could not do her own laundry, shop, prepare her own meals, perform heavy chores, take her own medications twice a day or less, take medications more than twice a day or perform a medical treatment in her home without assistance. Her medical certification (performed by her therapist) confirmed her diagnosis but disagreed with the petitioner's self-assessment. The therapist certified that the petitioner's mental health does not prevent her from doing her own laundry, shopping, preparing her own meals, doing heavy chores, and taking her own medications any number of times per day. She did not disagree that the petitioner cannot perform a medical treatment at home but the evidence shows that the petitioner does not need any medical treatments (feeding tube, suctioning, etc.) at home. She added that, to her knowledge, petitioner "is not sustaining any medical conditions that would require a trained medical professional, however, if she did, it would be necessary to consult her primary care provider."
4. The medical report on the petitioner's spouse indicated that he should not use his right hand to lift for

about one month. The report said nothing about any other problem.

5. Based on the above information, the Department mailed the petitioner a notice on July 9, 1996, informing her that her EP benefits would be terminated on August 1, 1996 because the services she requires are those reasonably performed by a spouse and because her spouse is able to work and the services she required did not prevent her spouse from working.

6. The petitioner vehemently disagrees with the statements of her therapist. She also maintains that her husband made mistakes in filling out the assessment form

because he thought he was describing his own abilities, not hers. She says she needs her husband to remind her to take her asthma medication (pills and an inhaler) which she uses at morning and night and to vacuum because of her asthma. Under oath her husband could not remember the names of her medications and she needed to remind him. She also claims that her husband cannot work due to reconstructive surgery on his right hand and right knee problems which interfere with his ability to stand. The petitioner was allowed additional time to submit medical reports substantiating her claims.

7. On October 3, 1996, after the original hearing, the petitioner filed a new functional assessment form in which she claimed that she needed her husband to manage her money, do her laundry and shopping, prepare her own meals, perform heavy chores, do ordinary housework, take out the garbage and help with her medications because she alleged she cannot read or write. She provided a certification from a physician saying he had not fully evaluated her dyslexia records but agreeing that she might need "some assistance with reading activities and lifting." He opined that she might need some assistance in reading her inhaler chart daily.

8. In a follow-up letter dated October 31, 1996, that same physician stated in response to an inquiry from the Department's attorney

. . . My very brief comments on my form, which I signed October 1, 1996 regarding the patient's requirement for assistance and level of disability stems largely from the fact that I did not have the opportunity to evaluate her disabling problems in any significant detail. Specifically I understand she is disabled based on dyslexia, but perhaps low back pain has also been part of this determination. I am not aware of the criteria for disability based on dyslexia nor do I have any data regarding the severity of her specific disability. My understanding is that she can read or write to some degree but does have some difficulty with managing some financial issues which are handled by her husband.

As far as the low back pain, this is a discomfort or ache which has never been treated adequately with an initial trial of physical therapy and conditioning.

At my visit with her on October 1, 1996 the paper was put in front of me regarding her essential person functional assessment and I completed it to the best of my ability. I request that if you would like a more thorough evaluation that you forward information regarding the criteria upon which I would base my decision regarding this patient's dyslexia or back discomfort. To the best of my understanding, dyslexia or even total illiteracy are not diagnoses which warrant disability payment. . . .

And on November 5, 1996, this physician further added:

. . . I would like to make it clear that I have no information other than that given to me verbally by this

patient dealing with her back pain as well as her dyslexia. I have had only one short visit with her in clinic and have had no previous records to review. . .

9. Based on the above evidence, it is concluded that the therapist's assessment of the petitioner's assistance needs as detailed in the second paragraph most accurately reflect her needs due to her mental disability. That assessment is that the petitioner has no need for help with any of the tasks listed on the forms, including taking her medications based on her mental limitations. The only physical disability the petitioner has documented is her asthma which may reasonably be found to prevent her from doing dusting or sweeping chores and performing some heavy household chores. Other claims made by the petitioner are found to be not credible based upon the inconsistencies in her evidence and the lack of documentation therefore. It is also found that the petitioner's husband is not disabled from work for thirty days based upon the medical evidence which he submitted.

ORDER

The decision of the Department is affirmed.

REASONS

The new regulations adopted by the Department in the EP program provide as follows:

At worst, the petitioner in this matter needs assistance with some ordinary and heavy household chores due to her asthma. That type of assistance is not listed in (a) or (b) above at W.A.M. § 2751.1. Assistance with these chores are those reasonably performed by a spouse and do not prevent her spouse from working. As such, the petitioner's spouse is not an essential person and the determination of the Department to terminate her EP grant is correct and the Board must uphold the decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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